

UNITED STATES DISTRICT COURT
Eastern District of California

**Petition to Modify the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearing, is on file)

Name of Offender: Romeo Pineda-Aguilar

Docket Number: 0972 1:02CR05367

Name of Judicial Officer: United States District Judge Lawrence J. O'Neill

Date of Original Sentence: 5/3/2004

Original Offense: 21 U.S.C. § 846 and 841(a)(1) and 18 USC 2 Conspiracy to Distribute and Possess With Intent to Distribute a Controlled Substance and Aiding and Abetting (CLASS A FELONY)

Original Sentence: 135 months BOP; 5 years TSR; \$100 special assessment; mandatory drug testing.

Special Conditions:

Warrantless Search
Drug/Alcohol Treatment
Drug/Alcohol Testing
Pager/Cellular Phone Restriction
No Alcohol
Mental Health Treatment
Community Corrections Center
Aftercare Co-payment
Registration (drug)

Type of Supervision: TSR

Date Supervision Commenced: 12/16/2011

Other Court Actions:

7/25/2012: Probation Form 12B submitted to the Court requesting the defendant's conditions of supervised release be modified to include a special condition requiring him to abstain from alcohol based upon two positive drug tests after he reported using controlled substances and alcohol. The Court approved on July 26, 2012.

1/2/2013: Probation Form 12B submitted to the Court requesting the defendant's conditions of supervised release be modified to include a special condition he reside in a residential

community corrections center for up to 120 days and he participate in outpatient mental health treatment based upon a positive drug test and his reported emotional distress. The Court approved the same date.

7/1/2014: Probation Form 12A submitted to the Court advising the defendant tested positive for THC. The probation officer requested no further action be taken as the defendant was referred to substance abuse testing and had tested negative since being referred. The Court approved the same date.

PETITIONING THE COURT

To modify the conditions of supervision as follows:

1. The defendant shall reside and participate in a residential community corrections center, Turning Point, in Bakersfield, California, for a period of up to 120 days; said placement shall commence as directed by the probation officer pursuant to 18 USC 3563(b) (11). The defendant shall pay the cost of confinement as determined by the Bureau of Prisons.

Justification: On July 1, 2014, the defendant called this officer requesting to meet with her because, "I think I'm gonna be in big trouble with you." He responded to the office shortly after and advised he was arrested over the weekend for driving under the influence of alcohol. When questioned, the defendant advised he was out with his girlfriend and her family celebrating a birthday during which he consumed three beers. His girlfriend was "really drunk" so he drove them home. He was pulled over for no front license plate and when he rolled the window down, the officer smelled alcohol. He advised his breathalyzer result was 0.08%. He was arrested and transported to the Kern County Jail for booking, and released the following day on a promise to appear.

The probation officer spoke with the defendant at length about his violation conduct; not only the arrest for the new law violation but his violation conduct for consuming alcohol, and the consequences affecting his supervised release status and his life in general. The defendant said, "If it's not one thing, it's another," and requested counseling to again teach him how to think about the short and long term consequences of his actions. He advised his entire family is upset with him. His mother wanted to take a belt to him and his 13-year-old daughter asked him if he wants to be "locked up" his entire life. The defendant described his family's reaction as "painful."

On July 2, 2014, the probation officer obtained the arrest report from the California Highway Patrol which described the arrest on June 28, 2014. The defendant was pulled over at 1:43 a.m. because his vehicle had no front license plate. The officer noted the distinct odor of an alcoholic beverage emitting from within the vehicle and the defendant's eyes were red and watery. A series of field sobriety tests were administered which the defendant failed to perform. Two breathalyzer tests were administered with results of 0.12% and 0.14%. As of the date of this report, the arrest report has not yet been submitted to

the Kern County District Attorney's Office for filing, but the defendant has a tentative arraignment date of July 22, 2014.

The defendant returned to the probation office on July 2, 2014, as instructed, at which time he was referred for twice monthly individual substance abuse counseling. He also signed a Probation Form 49 consenting to reside in a residential community corrections center for up to 120 days.

The probation officer considered filing a 12C Petition with a recommendation for incarceration, or a Modification with a request for an inpatient substance abuse treatment program. However, the defendant readily admitted his violation conduct, and no other notification was received as to his arrest so it is possible the probation officer would not have learned of his arrest until his case plan was due for update in June 2015. Also, the defendant recently graduated from barber school, passed his state boards, and opened a barber shop. If incarcerated or confined to an inpatient drug program, the defendant could not maintain his employment nor keep his business open which could negatively impact his successful completion of supervision and his future. It is felt the measures outlined above will adequately address the violation conduct and hold him accountable for his actions, yet will allow him to remain in the community where he can work and manage his business. The probation officer advised the defendant if he fails to comply with the rules of the residential community corrections center, submits a positive breathalyzer or urine test while in the program, or otherwise violates the conditions of his supervised release, the probation officer will file a 12C Petition recommending formal revocation proceedings.

Respectfully submitted,
/s/ Julie R. Martin

JULIE R. MARTIN
United States Probation Officer
Telephone: (661) 321-3817

DATED: 7/10/2014

Reviewed by,
/s/ Lonnie E. Stockton

LONNIE E. STOCKTON
Supervising United States Probation Officer

THE COURT ORDERS:

Modification approved as recommended.

CC:

United States Probation

Assistant United States Attorney: Virna Santos

Defense Counsel: Nicholas F. Reyes (rtnd)

IT IS SO ORDERED.

Dated: July 11, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE